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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re AUSA Financial Markets, Inc.

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Serial No. 75/019,131

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James C. Nemmers for AUSA Financial Markets, Inc.

Alice Benmaman, Trademark Examining Attorney, Law Office  
103 (Michael Szoke, Managing Attorney).

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Before Cissel, Hairston and Bottorff, Administrative  
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant AUSA Financial Markets, Inc. has applied to register the mark PREMIER FINANCIAL SERIES on the Principal Register for "providing administrative, advertising and marketing services for annuity contracts underwritten by affiliated life insurance companies."<sup>1</sup>

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<sup>1</sup> Application Serial No. 75/019,131, filed November 13, 1995. In the application, applicant alleges April 1995 as the date of first use of the mark anywhere and first use in interstate

The Trademark Examining Attorney has issued a final refusal of registration on the ground that applicant has failed to submit acceptable specimens showing use of the mark in connection with the sale or advertising of the services recited in the application, as required by Trademark Rule 2.58(a). Specifically, the Trademark Examining Attorney contends that applicant's specimens do not show use of the mark in connection with the recited "administrative, advertising and marketing services" assertedly offered by applicant to the affiliated life insurance companies, but rather show use of the mark only in connection with the sale and advertising of insurance services to the ultimate consumer.

Applicant has appealed the final refusal of registration.<sup>2</sup> Applicant and the Trademark Examining Attorney have filed briefs, but applicant has not requested an oral hearing.

By way of background, it appears from the record that applicant is a wholly owned subsidiary of AEGON USA, Inc.,

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commerce. Applicant has disclaimed the exclusive right to use FINANCIAL SERIES apart from the mark as shown.

<sup>2</sup> After the Trademark Examining Attorney made final her refusal to register based on the insufficiency of the original specimens, applicant submitted substitute specimens (with supporting declaration) along with a request for reconsideration of the refusal in light thereof. The Trademark Examining Attorney rejected the substitute specimens as unacceptable and denied applicant's request for reconsideration. This appeal followed.

and that four annuity underwriting companies, i.e., Bankers United Life Assurance Company, Life Investors Insurance Company of America, Monumental Life Insurance Company and PFL Life Insurance Company (the "affiliated companies"), also are wholly owned subsidiaries of AEGON USA, Inc. Together, AEGON USA, Inc., applicant, and the other four subsidiaries comprise the "AEGON Insurance Group." Applicant asserts in its brief that it is not a sales entity and does not directly market annuity products to the ultimate consumer, that it is "the administrative and marketing affiliate of the Group," and that it provides the support services recited in the application to the other four affiliated companies. Those services are said to include the creation of the annuity products, rate factors and payout options for the annuities, preparation of marketing materials, and the administration of any annuity contract after sale by an affiliated company.

The original specimens submitted with the application consist of a one-page brochure with the heading "Tax-Deferred Advantage." The mark sought to be registered, i.e., PREMIER FINANCIAL SERIES, is displayed in the manner of a service mark at the top right corner of the brochure. The brochure includes the following text (emphasis in original):

Now, more than ever, the tax treatment of deferred annuities is of tremendous importance to you and your retirement planning. With a tax-deferred annuity, your money earns interest that is not subject to income tax until you receive it. . .usually at retirement when you are in a lower tax bracket.

In later years, your annuity can provide tax-deferred payments for your retirement. With a Company guaranteed payment option, only a portion of each payment is taxable. Plus, *you decide* when it is the best time for you to begin receiving these scheduled payments.

If you decide to cash out your tax-deferred annuity and pay the taxes due. . .you would still be money ahead. Compared to a similar product subject to current taxes, the tax advantage would allow you to accumulate more dollars.

The brochure also states: "For the most current rates and product information, please contact your agent."

The substitute specimens submitted by applicant consist of another brochure, entitled "Saver's Edge II." As with the original specimens, the mark sought to be registered appears at the top right corner of the front of the brochure. "Saver's Edge II" is identified, in the text of this brochure, as "a custom designed single premium modified endowment life insurance policy" which "gives you long term 'living' benefits and significant 'estate' benefits for your surviving spouse and heirs." On its back panel, under the heading "Important Consumer Information," the brochure states: "We suggest you consult your own

attorney, accountant, or tax advisor on specific points of interest to you."

We have carefully considered applicant's original and substitute specimens, as well as applicant's arguments on appeal, and find that the Trademark Examining Attorney's refusal to register is proper.

A mark is deemed to be used in commerce "on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce . . . " Trademark Act Section 45, 15 U.S.C. §1127. In this case, neither of the specimen brochures submitted by applicant demonstrate that the mark PREMIER FINANCIAL SERIES is used or displayed in the sale or advertising of "sales, marketing, administration and other related services to affiliated life insurance companies," as required by Trademark Act Section 45. Rather, the specimen brochures show use of the mark only in connection with the sale and advertising, to the ultimate consumer, of the insurance services offered by applicant and/or its affiliated companies.

Accordingly, the brochures are not acceptable specimens of use of the mark as a service mark in connection with the recited services. *See In re Restonic*

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*Corp.*, 189 USPQ 248 (TTAB 1976).

Decision: The refusal to register is affirmed.

R. F. Cissel

P. T. Hairston

C. M. Bottorff

Administrative Trademark Judges  
Trademark Trial and Appeal Board